

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY ALLEN KIMBROUGH,

Plaintiff,

File No. 1:08-CV-624

v.

HON. ROBERT HOLMES BELL

CAROL HOWES, et al.,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AND DISMISSING COMPLAINT**

On September 16, 2008, United States Magistrate Judge Joseph G. Scoville issued a Report and Recommendation ("R&R") recommending that Plaintiff Jeffrey Allen Kimbrough's 42 U.S.C. § 1983 prisoner civil rights complaint be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A(b), and 42 U.S.C. § 1997e(c) for failure to state a claim on which relief can be granted. (Dkt. No. 8.) Plaintiff filed objections to the R&R on September 29, 2008. (Dkt. No. 9.)

This Court is required to make a *de novo* determination of those portions of the R&R to which objection has been made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Plaintiff contends that he has adequately stated an Eighth Amendment claim, but the

only factual allegation found in his objections relating to his claim is that Defendants “knew that Plaintiff was scared of getting back on the top bunk, and did nothing to stop it or help from keeping plaintiff safety.” (Obj. 4.) This characterization of his claim does not cure the defect noted in the R&R, i.e., that Plaintiff has alleged no more than negligence, which is not sufficient for an Eighth Amendment claim. Plaintiff’s allegations regarding medication and dental care are too vague to merit consideration as separate claims. Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s objections to the Report and Recommendation of the Magistrate Judge (Dkt. No. 9) are **DENIED**.

IT IS FURTHER ORDERED that the Report and Recommendation of the Magistrate Judge (Dkt. No. 8) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff’s complaint is **DISMISSED** for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A, and 42 U.S.C. § 1997e(c).

IT IS FURTHER ORDERED that this dismissal shall count as a **STRIKE** for purposes of 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that the Court finds no good-faith basis for appeal within the meaning of 28 U.S.C. § 1915(a)(3).

Dated: November 25, 2008

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE